

ARKANSAS SUPREME COURT

No. 05-874

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered

May 18, 2006

CLARENCE COLLINS

Appellant

PRO SE APPEAL FROM THE CIRCUIT
COURT OF JEFFERSON CIRCUIT, CV
2005-381-5, HON. ROBERT HOLDEN
WYATT, JR., JUDGE

v.

GEORGE BREWER, CLASSIFICATION
ADMINISTRATOR, ARKANSAS
DEPARTMENT OF CORRECTION

Appellee

AFFIRMED

PER CURIAM

Appellant Clarence Collins is an inmate incarcerated in the Arkansas Department of Correction. Appellant filed a *pro se* petition for writ of mandamus in the Jefferson County Circuit Court, which was denied. Appellant now brings this appeal of that order.

Appellant sought in his petition an order to compel appellee George Brewer, who is the Inmate Classification Administrator for the Arkansas Department of Correction, to reclassify appellant as a third offender, rather than the fourth offender, as appellant alleges, that is his current status. Appellant contends that appellee calculated appellant's status as a fourth offender based upon his incarceration on Class C felonies, and that inclusion of that incarceration is in error. The State contends that, whether or not appellant's Class C felonies are properly included, appellant falls within the classification of fourth offender under Ark. Code Ann. § 16-93-606(b)(4) (Repl. 2006)

based upon his other incarcerations.¹ We cannot reach the merits of appellant's argument, however, as he has not provided a record sufficient for our review.

The purpose of a mandamus action is to enforce the performance of a legal right after it has been established; its purpose is not to establish a right. *Robertson v. Norris*, ___ Ark. ___, ___ S.W.3d ___ (February 10, 2005). Appellant's claim is that he has a right to be classified as a third offender under section 16-93-606, rather than the fourth offender classification he now has, arguing that his classification is based upon incarceration for Class C felonies. The record includes a judgment and commitment order entered July 3, 1985, showing appellant's convictions on three felonies that are listed as Class C felonies, and two judgment and commitment orders entered June 1, 1981, that reflect convictions for burglary in two separate cases. The latter judgments also reference a third conviction. The record does not, however, include a judgment and commitment order for the referenced charge, or for two previous cases in which appellant admits to have suffered conviction. The record includes docket references to separate convictions in another burglary case and on charges of forgery and uttering, but no judgment for either case is included.

It is the appellant's burden to produce a record establishing that he indeed has a legal right. *Id.* The record before us does not establish the right appellant asserts. Without a complete record that contains the judgment and commitment orders for all of appellant's prior convictions, we cannot address appellant's arguments. Appellant clearly has convictions in more than three previous cases,

¹ Section 16-93-606(b)(4) provides for classification as a fourth offender for those inmates who are "convicted of four (4) or more felonies and who have been incarcerated in some correctional institution in the United States, whether local, state, or federal, three (3) or more times, for a crime which was a felony under the laws of the jurisdiction in which the offender was incarcerated...." Ark. Code Ann. § 16-93-606(a) (Repl. 2006) defines "felonies" as "those crimes classified as Class Y, Class A, or Class B by the laws of this state."

aside from those he asserts should not have been used to calculate his status under section 16-93-606. Appellant asserts that the earlier sentences were to run concurrently, but he has not provided a judgment that would support his claim. We cannot address whether or not appellant's classification was based upon his incarceration for Class C felonies with the record before us. Appellant has not provided a record that would allow us to determine that his classification was, in fact, based upon those convictions for Class C felonies and appellant's resulting incarceration, or that he has the right he asserts. Accordingly, we affirm the trial court's denial of the petition.

Affirmed.